IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11204 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OLYMPIC MANAGEMENT AND FINANCIAL SERVICES LTD

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 11204 of 2002

MR JV JAPEE for Petitioner No. 1

Mr. PD Bhate, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 18/12/2004

ORAL JUDGEMENT

In this petition, Rule is already issued. With the consent of the learned advocates appearing for the parties, the matter is taken up for Final Hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent No.1 dated 31.12.2001 by which the respondent

No.1 in exercise of powers under Section 32-A of the Bombay Stamp Act, 1958 ["the Act" for short] has passed an order determining the market value of the property in question at Rs. 1,35,81,251 and thereby directing the petitioner to pay an amount of Rs. 13,48,981 by way of deficit stamp duty and Rs. 250 by way of penalty.

3. Shri Japee, learned advocate appearing on behalf of the petitioner has submitted that the petitioner had purchased the property in question in a public auction held by the Gujarat State Financial Corporation (GSFC) on 23rd September 1997 for an amount of Rs. 8,54,000 and subsequently the petitioner has sold a parcel of land to one Prabhat Ilastomers Pvt.Ltd. by registered sale deed dated 30th March 1998. He has submitted that the petitioner has paid stamp duty at the time of execution of the sale deed on 23rd September 1997 considering the market value of the property in question at Rs. 8,54,000 which was paid by the petitioner to the GSFC by way of sale consideration. He has submitted that even the document executed between the petitioner and the said Prabhat Ilastomers Pvt.Ltd., dated 30th March 1998 was also subject to the proceedings under Section 32-A of the Act. It is the case of the petitioner that by order dated 18.2.1999/31.5.1999 the valuation of the property (the land) in question was considered by the authority at Rs. 4,50,000. It is submitted that proceedings under Section 32-A of the Act came to be initiated by the respondent No.1 with regard to the document in question executed between the petitioner and the GSFC for which impugned order came to be passed on 31.12.2001. Shri Japee, ld. advocate has submitted that when with regard to the very land subsequently by order dated 18.2.1999/31.5.1999 the respondent No.1 has passed an order of considering the market value of the property (the land) in question at Rs. 4,50,000 the respondent No.1 subsequently in a document of 23rd September 1997 with regard to the very land could not have exercised the powers and fixed the market value of the property in question at Rs. 1,35,81,251 and therefore requested to quash and set aside the impugned order.

4. Shri PD Bhate, learned AGP appearing on behalf of the State Government has submitted that number of opportunities were given to the petitioner but the petitioner did not file any reply and even did not appear before the authority and therefore the respondent No.1 has passed the impugned order. He has further submitted that in fact it was incumbent on the part of the petitioner to produce necessary evidence inclusive of the orders dated 18.2.1999/31.5.1999 passed by the respondent

No.1 with regard to the very land in question if the petitioner is relying upon them. Under the circumstances, Shri Bhate has requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. It is an admitted position that the petitioner has purchased the property in question by registered Sale Deed dated 23rd September 1997 from GSFC in public auction and the petitioner has paid the stamp duty on the said document. It is also an admitted position, so far as the land is concerned, that the petitioner has sold the very land to one Prabhat Ilastomers Pvt.Ltd., on 30th March 1998 for which the respondent No.1 has passed the orders dated 18.2.1999/31.5.1999 considering the market value in question at Rs. 4,50,000. It is true that the petitioner did not appear before the respondent No.1 and did not file any reply. However, this Court cannot ignore the order dated 18.2.1999/31.5.1999 of the respondent No.1 but is required to consider the same. Under the circumstances, the impugned order dated 31.12.2001 passed by the respondent No.1 is required to be quashed and set aside and the same is hereby quashed and set aside. The matter is required to be remanded to the respondent No.1 for passing an order afresh in accordance with law and after giving an opportunity to the petitioner to file reply, if any. The petitioner to file such reply within the period of 2 weeks from today and on receipt of the same the respondent No.1 is directed to consider the same and pass an appropriate speaking order in accordance with law and on merits.

6. For the reasons stated above, the matter is remanded to the respondent No.1 as stated hereinabove. Rule is made absolute to the above extent.

6.1. As the petitioner did not appear before the respondent No.1 and file reply the matter is now required to be remanded to the respondent No.1, the petitioner is directed to pay an amount of Rs. 1,500 towards costs to the respondent No.1. The petitioner to pay the said amount while submitting the representation and on receipt of the same an appropriate order be passed.

rmr. [M.R. Shah, J.]